

**SUBJECT- LABOUR LAW II**

**SEMESTER- 8<sup>TH</sup>**

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**COURSE- B.A.LLB**

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## UNIT 1- THE MINIMUM WAGES ACT 1948

The Minimum Wages Act, 1948 envisages to provide minimum statutory wages for scheduled employments with a view to obviate the chances of exploitation of labour through payment of very low and sweating wages. The Act also provides for the maximum daily working hours, weekly rest day and overtime. Rates fixed under Minimum Wages Act prevail over the rates fixed under award/agreement.

The Act applies to all establishments employing one or more persons and engaged in any Scheduled employment.

The State Governments have been empowered to fix rates of wages for different classes of employees -skilled, unskilled, clerical, supervisory, etc. employed in any Scheduled employment and to review and revise the same from time to time, the interval between two revisions not to exceed five years, considering the change in price index and dearness allowance.

### Object and Scope

The main objective of this Act, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant. The Act aims at preventing the exploitation of workers or labours in some industries, for which, the appropriate Government is empowered to take steps to prescribe minimum rates of wages in certain employment.

The Minimum Wages Fixing Machinery convention was held at Geneva in the year 1928 by ILO (International Labour Organisation) with reference to remuneration of workers in those industries where the, level of wages was substantially low and the labour was vulnerable to exploitation, being not well organised and having less effective bargaining power.

This Act may be called the Minimum Wages Act 1948. The Act enables the Central and State Government to fix minimum rates of wages payable to employees in selected number of 'sweated' industries. The Act extends to the whole of India.

### CONCEPT OF MINIMUM WAGE, FAIR WAGE, LIVING WAGE AND NEEDS BASED MINIMUM WAGE

Wages have been classified into three categories:

(1) Living wages (2) Minimum wages (3) Fair wages

**Living Wages-** Living wages has been defined differently by different people in different countries. The best definition is given by Justice Higgins which reads "Living wage is a wage sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days etc. as regard for the skill of an artisan, if he is one". According to Fair Wages Committee Report: "The living wage should enable the male earner to provide himself and his family not merely the basic essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirement of

essential social needs and measures of insurance against old age." Thus living wages means the provision for the bare necessities plus certain amenities considered necessary for the wellbeing of the workers in terms of his social status.

Article 43 of the Constitution of India states that the state shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of pleasure and social and cultural opportunities. Thus, Government of India has adopted as one of the directives of the principle of state policy to ensure living wages.

**Minimum Wages**—The minimum wage may be defined as the lowest wage necessary to maintain a worker and his family at the minimum level of subsistence, which includes food, clothing and shelter. When the government fixes minimum wage in a particular trade, the main objective is not to control or determine wages in general but to prevent the employment of workers at a wage below an amount necessary to maintain the worker at the minimum level of subsistence.

Minimum wage in a country is fixed by the government in consultation with business organisations and trade unions. The law relating to the minimum wage either states definitely the wage considered to be the minimum or the determination of the wage left to an administrative commission which from time to time determines the minimum wage according to the varying economic conditions, e.g., variation in the price level should be compensated with the variation in the wage rates because the prime aim of the minimum wage law is just to cover "minimum living cost." The authority entrusted with the task of fixing of minimum wage should consider such factors as local economic conditions, transportation cost and the size of the units in the industry in fixing minimum wages.

The Government of India passed a Minimum Wage Act in 1948 under which farm labourers were to be paid a minimum wage between 66 paise and Rs. 1.50 per day, keeping in view local costs and standards of living. Since conditions in various parts of the country were different, the law allowed different rates of wages to be fixed in a poor country such as India. In practice, it was very difficult to enforce minimum wages effectively. Fortunately, the recent inflationary situation had pushed up the rural wages much above the minimum wages fixed by law. Minimum wages legislation is supposed to have the following benefits:

- (i) These laws prevent unscrupulous employers from exploiting ignorant persons who possess very little bargaining power.
- (ii) These abolish the competition of the lower strata of workers with the upper grades and tend to prevent depressing of wages.
- (iii) The productivity of industry is increased by foreign employers to use the most efficient production methods and the most modern equipment, in order to enable employees to earn the living wage. But at the same time, the workers are stimulated to increase his efficiency in order to hold his job.
- (iv) Employer with high standards are protected against underselling by competitors with low standards.

But some critics of the minimum wage assert that it is impossible for a group of men to control the wages of labour by law because wages depend upon the supply and demand of labour. Minimum wages are a heavy burden to the society because persons unable to earn a living wage will be unemployed whereas earning of small wage is preferred to idleness or living on charity. However, basically, minimum wage laws are not wrong if they are wisely framed and applied. It is perfectly feasible to fix a minimum wage and forbid employment below that figure. Some industries that cannot profitably pay the wages fixed may be forced to wind up because of the financial burden. But, then, what is the use of an industry if it cannot even pay a living wages to its workers and it is better to dispense with it. Industries that can pay a living wage should, if necessary be forced to do so. The difficulties to be encountered are rather those of practical operation. The administration of the modern industry is very tedious due to the complexity of the wage system. However, if the wage limit is fixed at the very lowest minimum, the risk is slight.

**Fair Wages**—A fair wage is something more than the minimum wages. Fair wage is a mean between the living wage and the minimum wage. While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is the capacity of the industry to pay fair wage compares reasonably with the average payment of similar task in other trades or occupations requiring the same amount of ability. Fair wage depends on the present economic position as well as on its future prospects. Thus the fair wages depends upon the following factors:

- a) Minimum Wages
- b) Capacity of the industry to pay
- c) Prevailing rates of wages in the same or similar occupations in the same or neighbouring localities
- d) Productivity of labour
- e) Level of national income and its distribution.
- f) The place of the industry in the economy of the country.

### **CONSITUTIONAL VALIDITY OF MINIMUM WAGES ACT 1948**

India introduced the Minimum Wages Act in 1948, giving both the Central government and State government jurisdiction in fixing wages. The act is legally non-binding, but statutory. Payment of wages below the minimum wage rate amounts to forced labour. Wage Boards are set up to review the industry's capacity to pay and fix minimum wages such that they at least cover a family of four's requirements of calories, shelter, clothing, education, medical assistance, and entertainment. Under the law, wage rates in scheduled employments differ across states, sectors, skills, regions and occupations owing to difference in costs of living, regional industries' capacity to pay, consumption patterns, etc. Hence, there is no single uniform minimum wage rate across the country and the structure has become overly complex.

#### **(A)The act is not unreasonable:**

It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the

general interest of the public. This is one of the directive principles of the state policy embodied in Article 43 of the constitution.

Individual employers might find it difficult to carry on the business on the basis of minimum wages fixed under the Act but this must not be the entire premise and reason to strike down the law itself as unreasonable.

“The restrictions, though they interfere to some extent with the freedom of trade or business guaranteed under Article 19(1)(g) of the constitution, are reasonable and, being imposed on the general interest of the general public, are protected by the terms of the clause (6) of the article 19.” This quote is a part of judgment in the case “ Gulmuhommad Tarasaheb , a bidi factory by its proprietors Shamrao vs State of Bombay, AIR 1962 Bom 97: AIR1955, Sc33:1963, Ker 115: 1964 Tri 32.

Another important judgment that favours and supports the constitutional validity of the Minimum Wages Act, 1948 is, “ V. Unichonoy vs State of Kerala, 1962, SC12. This case raised the same questions which were raised in the case of Gulmuhommad Tarasaheb vs State of Bombay, AIR 1962 Bom 97”, which were, “that, can a state be prevented from making any law, in the interest of general public, where it creates restrictions and interferes to some extent with the freedom of trade or business guaranteed under Article 19(1)(g), of the Constitution of India, and it was held that, “ Fixation of minimum wages is for preservation of public order, and if no minimum wage is fixed then it shall lead to arbitrariness by the employers and that shall lead to clashes of interest between employer and labour which shall cause friction in society”.

The article 14 of the Indian Constitution which relates to equality before the law, it must be noted that minimum wages are not fixed equally across the whole nation but they vary from occupation to occupation and industry to industry and from place to place.

The case of Uchinoy vs State of Kerala, 1962 SC12, further quotes the following, “ As regards to the procedure for fixing of the minimum wages, the ‘appropriate government’ has undoubtedly been given very large powers, but it has to take into consideration, before fixing wages, the advice of the committee if one is appointed on the representations on proposals made by persons who are likely to be affected thereby. The various provisions constitute an adequate safeguard against any hasty or capricious decision by the ‘appropriate government’. In suitable cases, the ‘appropriate government’ has also been given the power of granting exemptions from the operations of the provisions of the Act. There is no provision undoubtedly, for a further review of the decision of the appropriate government, but that itself would not make the provisions of the act unreasonable”.

#### **(B) The Act doesn't violate Article 14 of the Indian Constitution.**

“On a careful examination of the various provisions of the Act and the machinery setup by this Act, Section 3(3)(iv) neither contravenes Article 19(1) of the constitution nor does it infringe the equal protection clause of the constitution. The Courts have also held that the constitution of the committees and the Advisory Board did not contravene the statutory provisions in that behalf prescribed by the legislature”, - this was held in the case of ‘Bhikusa Yamasa Kshatriya vs Sangammar Akola Bidi Kamgar Union’, AIR 1963 SC306. Further, as decided in the case “C.B. Boarding & Lodging, Re(1970) II LLJ 403: AIR 1970: SC 2042 : 38 FIR I.”, it added



to the above mentioned case that , “... nor the reason that two different procedures are provided for collecting information.” .

**(C) Notification fixing different rates of minimum wages for different localities is not discriminatory.**

where the fixation of rates of wages and their revision were manifestly preceded by a detailed survey and enquiry and the rates were brought into force after a full consideration of the representations which were made by a section of the employers concerned, it would be difficult in the circumstances to hold that notification which fixed different rates of minimum wages for different localities was not based on intelligent differentia having a rational nexus with the object of the Act, and thereby violated article 14. when the Government issued notification improving upon the existing minimum wages as revised minimum wages disregarding the contrary report of the committee appointed under Section 5-1(a) ; such notification was bad under the law and was to be made inoperative.”.

As pointed out by one of the India's Union Labour and Employment Minister Shri Mallikarjuna Kharage ;, “The variation of minimum wages between the states is due to differences in socio-economic and agro-climatic conditions, prices of essential commodities, paying capacity, productivity and local conditions influencing the wage rate. The regional disparity in minimum wages is also attributed to the fact that both the Central and the State Governments are the appropriate Governments to fix, revise and enforce minimum wages in Scheduled employments in their respective jurisdictions under the Act”.

Referring the case of “N.M.Wadia Charitable Hospital vs State of Maharashtra , 1993”, it was decided by the Court that – “ Fixing different minimum wages for different localities is permitted under the constitution and under labour laws , hence the question that any proviso of the Minimum Wages Act is in any way against the proviso of constitution is wrong.

The constitution of India accepts the responsibility of the State to create an economic order, in which every citizen finds employment and receives a “fair wage”. This made it necessary to quantify or lay down clear criteria to identify fair wage. Therefore, a Central Advisory Council, in its first session in November 1948, appointed a tripartite Committee on Fair Wages. The committee consisted of representatives of employers, employees, and the Government. Their task was to enquire into and report on the subject of fair wages to the labour.

**(D) Sanctity of the Minimum Wage Act**

Supreme Court in three separate rulings has held that non payment of minimum wages is tantamount to ‘forced labour’ prohibited under Article 23 of the Constitution. The Supreme Court holds that ‘forced labour’ may arise in several ways, including “compulsion arising from hunger and poverty, want and destitution”. In Sanjit Roy Vs. State of Rajasthan (1983), the Supreme Court held that the Exemption Act in so far as it excluded the applicability of the Minimum Wages Act 1948 to the workmen employed in famine relief work is “clearly violative” of Article 23. Thus even public works ostensibly initiated by the government for the sole purpose of providing employment are subject to the Minimum Wage Act.

Drawing on the Supreme Court rulings, Andhra High Court set aside the Government of India (GOI) notification mandating that prevailing state minimum wage be paid. This has been underscored in the legal opinion provided by Additional Solicitor General, Ms. Indira Jaising, to the Central Employment Guarantee Council (CEGC) Working Group on Wages where she made it clear that using Section 6(1) to allow a payment of less than minimum wage in MGNREGA works will amount to forced labour. 15 eminent jurists and lawyers of India too have asked Government of India to immediately revoke its unconstitutional notification and ensure that minimum wages are paid to all workers in India.

The Act and the judgments are in favour of equality provided under Article 14 of the Constitution and a judgement in the case namely, “Engineering Workers Union /vs/ Union of India (1994) I .LLJSup.942Bom.”, pronounces the judgment that , “The provision under Section 3(2)(A), that minimum rate of wages in scheduled employment fixed or revised, shall not apply to the employees during the period of adjudication, violated equality clause of Article 14 and hence that section is void”.

In the view of the Directive Principles of State Policy as contained in the Article 43 of the Indian Constitution, it is beyond doubt that securing of living wages to labourers which ensures not only bare physical subsistence but also the maintenance of health and decency it is conducive to the general interest of the public.

### **FIXATION AND REVISION OF WAGES (Sec 3 to Sec 5)**

The fixation and revision of wages falls under the Sec 3, Sec 4 and sec 5. Sec 3 deals with, the appropriate government fix the minimum wages that is payable to the employees in any scheduled employment. The sec 4 describes on the contents of minimum wages. Sec 5 lays down the procedure for fixing and revising the minimum rates of wages. Minimum Number of Employees: The appropriate government can forbear from fixing minimum rate of wages of any scheduled employment in which there are less than 1,000 employees in the organization. But if the appropriate government find after an inquiry that there are more than 1,000 employees in any scheduled employment, it shall fix the minimum rate of wages payable as soon as after the finding.

### **Fixing of minimum rates of wages (Sec. 3)**

Under sec 3, the appropriate Government fix the minimum rate of wages .The appropriate government-

- a) shall fix the minimum rate of wages payable to the employees employed in the employment specified in Part I or part II of the schedule( the schedule is reproduced at the end of the unit) and in an employment to either by notification in official Gazette.
- b) the employees employed in the employment specified in Part II of the schedule ( the schedule is reproduced at the end of the unit), fix the minimum rate of wage for apart of the state or for any specified class, instead of fixing the minimum rate of wages for the whole state.

- c) shall review the minimum rate of wages so fixed and revise the same , at such intervals not exceeding 5 years.

**Minimum rates: The Appropriate Government may fix:**

- minimum rate of wages for time work (hereinafter referred to as "**a minimum time rate**");
- minimum rate of wages for piece work (hereinafter referred to as "**a minimum piece rate**");
- a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");
- a minimum rate (whether time rate or piece rate) to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employees (hereinafter referred to as "over time rate").

Different minimum rates: The different minimum rates of wages may be fixed for-

- different scheduled employments;
- different classes of work in the scheduled employment;
- adults, adolescents, children and apprentice;

**Minimum Rate of Wages (Sec 4)**

The appropriate governments fix or revise minimum rate of wages may consists of-

- a basic rate of wages and special allowance
- a basic rate of wages with or with the cost of living allowance
- an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions

**PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (SEC 5)**

There are two separate modes of procedure for fixing and revising minimum wages under sec 5. the main object of both the procedures is to enable the government to reach a balanced conclusion with regard to fixation of a minimum wage. The two modes are as follows:

- Mode one: Appointment of Committee:** The appropriate government should appoint as many committees or sub-committees as to hold necessary inquiries for fixation of minimum rates of wages.
- Mode two: Publication of proposals in the official gazette:** The appropriate government shall by notification in the official Gazette, publish its proposals for the information of the person who is likely to be affected by the fixation of minimum rates of wages.

**PROCEDURE FOR HEARING AND DECIDING CLAIMS**

The Appropriate Government can appoint by notification in the Official Gazette an inspector (sec 19)



The inspector can within his local limit

- a) enter at all reasonable hours, with such assistant ( if any ) or any local or other public authority ,as think fit any premises or place of premises where employees are employed or for the purpose of examining any register, record of wages or notices required to be kept;
- b) examine any person he find in such premises or depending on any reasonable causes believe is an employee or an employee who given out his work from therein;
- c) require any person giving out work or any out-workers to give any information, which in his power to give with respect to the names and addresses of the persons from or to whom the work is given out or received and with respect to the payment to be made for the work.
- d) seize or takes copies of the register, record of wages or notices in respect of any offence under the Act.
- e) exercise such other powers as may be prescribed.

Within the meaning of section 175 and 176 under Indian Penal Code, any document or information given by the inspector shall be deemed to be legally bound. The inspector shall be deemed to be a public servant within the meaning of Indian Penal Code.

The employee can claims for minimum wages (under section 20):

1. The Appropriate Government may by notification in the Official Gazette, appoint

- a. any Commissioner for Workmen's Compensation, or
- b. any officer of the Central Government exercising functions as a Labour Commissioner for any region,
- c. any officer of the State Government not below the rank of the Labour Commissioner or, any other officer.

Such person should have an experience as a judge of a Civil Court or as a stipendiary Magistrate to hear or decide any claims arising out of the payment of less than the minimum rates of wages.

2. Again for any claims of the employees under section 3, the employees himself or any legal practitioner or any official of a registered trade union or inspector can apply to such Authority and the application shall present to them within six month from the date on which the minimum wages became payable.

3. After the necessary enquiry, the Authority shall hear the applicant and the employer and give them opportunity of being heard. If the wages is paid of less than the minimum rates of wages, than the Authority may asked to the employer to pay exceed the actual amount which has to pay in addition with compensation not exceeding ten times the amount of such excess for such act.

In any other case, if the payment become due than the employee will get together with the payment of such compensation as the Authority may think fit not exceeding ten rupees.

4. If under this section the Authority hearing any claim and found that it was either malicious or vexatious, it may direct penalty not exceeding fifty rupees to the employer by the person presenting the application.

5. Under this section if any amount is directed to be paid than as if it were a fine imposed by the Authority as a Magistrate or if he is not Magistrate than to such person whom the Authority makes application in this behalf as if were a fine imposed by such Magistrate.

6. Every direction is final under this section.

7. Every Authority appointed shall have all powers of a Civil Court under the Code of Civil Procedure, 1908.

## **UNIT 2- PAYMENT OF WAGES ACT 1936**

With the growth of industries in India, problems relating to payment of wages to persons employed in industry took an ugly turn. The industrial units were not making payment of wages to their workers at regular intervals and wages were not uniform. The industrial workers were forced to raise their heads against their exploitation.

In 1926, Government of India wrote to local governments to ascertain the position with regard to the delays which occurred in the payment of wages to the persons employed in Industry. Material so collected was placed before the Royal Commission on Labour which was appointed in 1929. On the report of the Commission, Government of India re-examined the subject and in February, 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and circulated for the purpose of eliciting opinions. A motion for the reference of the Bill to a Select Committee was tabled but the motion could not be passed and the Bill lapsed. In 1935 the Payment of Wages Bill, based upon the same principles as the earlier Bill of 1933 but thoroughly revised was introduced in the Legislative Assembly on 15th February, 1935. The Bill was referred to the Select Committee. The Select Committee presented its report on 2nd September, 1935. Incorporating the recommendations of the Select Committee, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly.

### **Object and scope**

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorised under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 10,000 or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

### **Application of the act**

It applies in the first instance to the payment of wages to persons employed in any factory, to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a subcontractor, by a person fulfilling a contract with a railway administration, and to persons employed in an industrial or other establishment specified.

## **MEANING OF WAGE**

**Section 2** of the act defines **Wage** which is follows-

- Wage means all remuneration (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment, and
- **includes:-**
  - any remuneration payable under any award or settlement between the parties or orders of a court
  - any remuneration .. in respect of overtime work or holidays or any leave period
  - any additional remuneration (whether called a bonus or by any other name)
  - any sum to which the person is entitled under any scheme framed under any law for the time being in force
- **does not include:-**
  - any bonus, profit-sharing or otherwise which does not form part of the remuneration payable
  - value of any house accommodation or of supply of water, light, medical assistance or other amenity or any service excluded from the computation of wages
  - any contribution paid by the employer to any pension or provident fund
  - any traveling allowance
  - any sum paid to defray special expenses entitled on him by the nature of his employment
  - any gratuity payable

## **RESPONSIBILITY OF PAYMENT OF WAGES**

Regarding responsibility for payment of wages, under section 3 of the Act, it is stated that the employer is responsible for the payment of wages. In the case of persons employed (otherwise than by a contractor) the following persons are also responsible for the payment of wages.

(i) The person named as manager in a factory.

(ii) In Industrial establishments the person, if any, who is responsible to the employer for the supervision and control of the establishment.

(iii) Upon railways the person nominated by the railway administration in this behalf for the local area concerned.

(iv) In case of persons employed in the case of contractor, a person designated by such contractor who is directly under his charge, shall be responsible for the payment of wages to the employed persons.

(v) In case of persons employed in any other case, a person designated by the employer as a person responsible for complying with the provisions of this Act, shall be responsible for payment of wages to the employed persons.

According to section 3(2) of the Act. it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractors or the person designated by the employer fails to make such payments.

The ascended section 3 has removed the doubts regarding responsibility for payment of wages in case the contractor or the person designated by the employer fails to make the payment. Now it has been specifically made clear that in case of such failure on the part of the contractor or designated person, it shall be the responsibility of the employer himself to make the payment of wages.

### **FIXATION OF WAGE PERIOD**

- Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.
- No wage-period shall exceed one month.

### **TIME OF PAYMENT OF WAGE**

Regarding the time of payment of wages the section 5 of the Act. provides the following rules.

(i) According to section 5(1) (a), if the number of persons employed upon or in any railway factory or industrial or other establishment in less than 1000, wages shall be paid before the expiry of the seventh day after the last day of the wage period.

(ii) According to Section 5(1) (b), the wages of every person employed upon to in any other railway. factory or Industrial or other establishment shall be paid before the expiry of the tenth day of the 1st day of wage period in respect of which the wages are payable further it is provided under the section 5(1) (b), that in the ease of persons employed on a dock, Whart or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded so the case may be, shall be paid before the expiry of the seventh day of such completion.

(iii) According to section 5(2), in case of the termination of the employment of an employee, the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated. However, where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. In such a case, the second day may or may not be the working day.

(iv) According to section 5(4) all payment of wages shall be made on a working day. However as discussed above, in case of termination of employment due to closure of



establishment, the wages shall be paid before the expiry of second day from the day of termination even if it is not the working days.

(v) According to section 5(3), the appropriate government may exempt the persons responsible for payment of wage from the operation of the above provisions relating to the time of payment in the followings relating to the time of payment in the following cases –

- a) where wages are payable persons employed upon any railway otherwise than in a factory or
- b) where wages all payable to persons employed as daily rated workers in public works Department of the Central or State Government of course, in this case no exemption order shall be made except in consultation with the central Government.

Under section 6, all wages shall be paid in current coin or currency brutes or in both of course, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

By an amendment in Maharashtra it was provided that in the case of a bonus which exceeds one fourth of the annual earning of the employee the excess may be paid by cheque invested.

## DEDUCTIONS

According to section 7, the wages of an employed person shall be paid to him without deductions of any kind except those which are authorised by this Act. As per the Act, the following deductions are permitted.

**A. Fines :** According to the clause (a) of section 7 (2), deductions by way of fine out of the wages of an employed person shall be made only in accordance with the provisions of the Act. Below, we briefly discuss the provisions regarding imposition and deduction of fine from the wages of an employed person.

(i) Approval of the Acts and Omissions: According to section 8 (2), fines shall be imposed only in respect of such acts or omissions which have been specified by notice with the approval of the State Government or of the prescribed authority.

(ii) Display of Notice: The notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than a factory) in the prescribed place.

(iii) Opportunity to show cause: No fine shall be imposed on any employed person until he has been provided with an opportunity of showing the cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines under the Act.

(iv) Amount of fine: The total amount of fine which may be imposed in any wage period on any employed person, shall not exceed 3 percent (previously half anna per rupee) of the wages payable to him in respect of that wage period.

(v) Age Limit for fine: No fine shall be imposed on any employed person. Who is under the age of fifteen years.

(vi) Not Recoverable in Instalments and after under delay : Fine imposed on any employed person cannot be recovered in instalments, nor it can be recovered after the expiry of 60 days from the day on which it was imposed.

(vii) Day of Imposition of fine: Every fine shall be deemed to have been imposed of the day of the act or omission in respect of which it was imposed.

(viii) Register of fines: All fines and their realisation shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 of the Act. in such form as may be prescribed.

(ix) Use of fines: All fines so realised shall be used only in such purposes beneficial to the persons employed in the factory as establishment as are approved by the prescribed authority.

(x) Penalty for Breach: The breach of the provision of section 8 is punishable with fine which may extend to Rs. 500/- except in the case of (2) and (9) where the penalty shall extend to Rs. 200.

**B. Deductions for absence from Duty:** Clause (b) of the section 7 (2) authorises deductions for absence from duty section 9 of the Act states as under:

(1) Deductions may be made only on account of the absence of employed person from the place or places where, by the terms of employment he is required to work.

(2) Such absence may be for the whole or any part of the period during which he is so required to work and

(3) An employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses to carry out his work in pursuance of stay-in-strike or for any other cause which is not reasonable under the circumstances.

**C. Deductions for damage or loss :** Clause (c) of section 7 (2) authorises deductions for damages to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default

Regarding deductions for damages or loss following provisions are laid down under the Act:

1.Clause (0) of the section 7 (2) permits deductions for recovery or losses sustained by a railway administration on account of any rebate or refunds, incorrectly granted to the employed person where such loss is directly attributable to his neglect or default.

2. Section 10 (1) provides that any deduction for damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person.

3. According to section 10 (1-A) deduction for damage or loss shall not be made until the employed person is given an opportunity of showing cause against the deductions.

4. Any such deduction may be made only in accordance with such procedures as may be prescribed for the purpose.

5. According to section 10 (2) all such deduction and all realisation thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed.

6. Penalty for breach of the above provisions of section 10 shall be punishable with fine which may extend to Rs. 500/-

**D. Deductions for Services Rendered:** According to section 11 under clause (d) and (e) of section 7 (2) deduction shall not be made from the wages of an employed person unless the house accommodation, amenity or service having been supplied by the employer, has been accepted by him as a term of his employment or otherwise. This deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and the deductions shall further be subject to such conditions as the State Government may impose. Any contravention of the provision in this regard shall be punishable with fine which may extend upto Rs. 500/-

**E. Deduction from Loan advances and overpayment of wages:** Deductions are permitted for recovery of advances or overpayment. According to section 12, it is provided that recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of advances which are given for the travelling expenses. Moreover, it is also provided under section 12 that recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the instalments by which they may be recovered under section (1-A) deductions for recovery of loans granted for house construction etc. shall be subject to any rules made by the State Government regulating the extent to which such rules may be given and the instalments by which they may be recovered.

**F. Other:** In addition to above items, following are also deducted from wages –

- a) Income Tax.
- b) Orders of court.
- c) Provident Fund.
- d) Cooperative Societies and Insurance Schemes.
- e) Deduction as per written authorisation of employed person.

## MAXIMUM AMOUNT OF DEDUCTION

The total amount of deductions which may be made under sec 7 in any wage-period from the wages of any employed person shall not exceed-

- (i) in cases where such deductions are wholly or partly made for payments to co-operative societies seventy-five per cent of such wages, and

- (ii) in any other case, fifty percent of such wages;

provided that where the total deductions authorised exceed seventy five percent, or as the case may be, fifty percent, of the wages, the excess may be recovered in such manner as may be prescribed.

### UNIT 3- WORKMEN COMPENSATION ACT 1923

The Workmen Compensation Act, 1923 is one of the important social security legislations. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers.

The Workmen's Compensation Act, 1923 extends to the whole of India. It came into force on the first day of July, 1924. It is social security legislation. The Workmen's Compensation Act, 1923 imposes statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions. The aim of the Act is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible in comparison in case of proceedings of civil law. The Act also helps the dependants to get relieved from the hardship, rising from accident.

#### DEFINITION

**Dependant-** Section 2(d) gives a list of persons who come within the category of "dependant" of a workman. In ordinary language the dependant of a person is one who lives on his earnings. Under Section 2 (d) there are three categories of dependants.

1. The following relations are dependants, whether actually so or not-widow, minor legitimate son, unmarried legitimate daughter, a widowed mother.

2. The following relations come within the category if any were wholly dependant on the earnings of the deceased workman at the time of his death-a son or daughter who has attained the age of 18 years and who is infirm.

3. The following relations are dependants if they were wholly or partially so at the time of the workman's death-

- widower;
- parent, other than widowed mother;
- minor illegitimate son;
- unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a .minor or if widowed and a minor,
- a minor brother or an unmarried sister or widowed sister if minor;
- a widowed daughter-in-law, a minor child from a predeceased son;

- a minor child from a predeceased daughter where no parent or child is alive: or
- a paternal grandparent if no parent of the workman is alive.

**Workmen-** The definition of the term workman is important because only a person coming within the definition is entitled to the reliefs provided by the Workmen's Compensation Act. "Workman" is defined in Section 2(n) read with Schedule II to the Act.

In Schedule II, a list (consisting of 32 items) is given of persons who come within the category of workmen. Examples: Persons employed otherwise than in a clerical capacity or in a railway to operate or maintain a lift or a vehicle propelled by steam, electricity or any mechanical power ; person employed otherwise than in a clerical capacity in premises where a manufacturing process is carried on; seamen in ships of a certain tonnage; persons employed in constructing or repairing building or electric fittings ; persons employed in a circus or as a diver; etc.

According to section 2 (n)-

Workman means any person (other than a person whose employment is of a casual in nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

- a master, seaman or other member of the crew of a ship,
- a captain or other member of the crew of an aircraft,
- a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is



satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons :

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

**What is employment of a casual nature?** Employees of a casual nature, if not employed in the employer trade or business do not come within the definition of the term workman as used in the Act.

Generally speaking, casual work is one which is not regular .or continuous. A person doing odd jobs was employed by the occupier of a private premises to clean windows. Held, his work was of a casual nature. *Hill v. Begg*. A person officiating in a leave vacancy is not a casual worker. In the matter of *Alam Singh*.

Whether the employment is for the purpose of the employer's trade or business depends on whether the contract of service entered into by the employer was hi his capacity as businessman or in a private capacity. When a coal mine employs workers to dig for coal it is for his trade or business. But a mine owner engaging workers for building his residence, is not engaging them for his trade or business.

A person who does service which is illegal and void cannot be a workman and cannot claim compensation. *Kemp v. Lewis*.

**Partial disablement-** Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total. In the Act both types .of disablement are further subdivided into two classes, temporary and permanent.

By Section 2 (g) Temporary Partial Disablement means such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident, and Permanent Partial Disablement means such disablement .as reduces his earning capacity in every employment he was capable of undertaking at that time. -The Act is not limited only to physical capacity of disablement, but extends to ~he reduction of earning capacity as weii. *Sukkai v. Hukum Chand lute Mills Ltd.*'

In a case of Partial Disablement it is necessary that (a) there should be. an accident, (b) as a result of the accident the workman should suffer injury, (c) which should result in permanent disablement and (d) as a result whereof his earning capacity must have decreased permanently. In the proportion in which his earning capacity has been decreased permanently he is entitled to compensation.

### **Total disablement-**

According to Section 2(1) total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of

performing at the time of the accident resulting in such disablement, provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity as specified in that schedule against those injuries, amounts to one hundred per cent.

## EMPLOYERS LIABILITY FOR COMPENSATION

Section 3(I) lays down that if personal injury is caused to a workman by accident arising out of and in course of employment, his employer shall be liable to pay compensation.

From the above it follows that the employer is liable when (a) injury is caused to a workman by accident and (b) the accident arises out of and in course of employment. An occupational disease is deemed to be an injury by accident and the employer is liable to pay compensation. The section itself provides that in certain cases of injury, no compensation is payable.

**What is an accident?** Lord Macnaughten in *Fenton v. Thorley & Company* defined an accident as "an unlocked for mishap or untoward event which is not expected or designed". Thus a self inflicted injury is not an accident ordinarily. In *Grime v. Fletcher* a person became insane as a result of accident and then committed suicide. It was held that death was the result of the accident and compensation was awarded. But where insanity was not the direct result of the accident compensation cannot be awarded. e.g where suicide was due to brooding over the accident. *Withers v. L. B. & S. C. Railways*. A series of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of injury, would constitute together an accident to furnish a proper foundation for a claim under the Act.

**Personal Injury.** A personal injury is not necessarily confined to physical or bodily injury. Injury includes psychological at physiologigal injury such as nervous shock, insanity etc. The injury must be personal. An injury to the belonging of a workman does not come within the Act.

A workman had to go into a heating room and from there to cooling plant. The changes of temperature caused pneumonia an, the workman died. Held, the death was due to personal injury. *The Indian News Chronick Ltd. v. Mrs. Luis Lazarus*." Death was the result of heat-stroke. Held that dependant was entitled to compensations. *Santon Fernandez v. B.P. (India) Ltd.*"

Arising out of and in the course of employment. This phrase been copied from the English Act on the subject. The phrase has been interpreted in a large number of cases, English and Indian. But difficulties still remain.

**In the course of employment:** This part of the phrase covers the period of time during which the employment continues. Compensation is payable if the accident occurs within the period of employment. Generally speaking employment commences when the employee reaches his place of work and ceases when he leaves the place. 'But there are several exceptions to the above rule.

- (1) When the workman uses transport provided by the employer for the purpose of going to and from the place of work the time during which he uses the transport, is included in the course of his employment.
- (2) The time during which the workman is upon the premises of the employer should be included in the period of employment. An employee of the E. I. Railways was knocked down and killed by a train while returning from duty by crossing the platform. area, Held, the accident arose out of and in course of employment.
- (3) If the workman reaches the place of employment before the time when the employment begins: if it was necessary and not too early, or if at the time of accident he was doing something to equip himself for the work, he is in course of employment
- (4) If the workman with the knowledge and permission of the employer lives at some distance from the place where he is called upon to work and if in the course of proceeding at a reasonable time and in a reasonable manner from his place to the place of work. he meets with fatal accident then his accident must be held to arise out of and in course of employment.
- (5) The period of rest during the period of employment is in the course of employment. But if the workman goes outside the employer's premises during the rest period and meets with an accident, it is not in course of employment.

Arising out of the employment: In *Dennis v. Whlute*, it was observed that, "When a man runs a risk incidental to his employment and is thereby injured, then the injury arises out of the employment."

**Notional Extension-** As a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory or notional extension of employer's premises so as to include an area which the Workman passes and repasses in going to and in leaving the actual place of work".

**Occupational Diseases.** Persons employed in certain occupations are liable to be attacked by certain diseases. For example, a person engaged in an employment involving exposure to dust containing silica is liable to contract silicosis, telegraph operators are liable to have what is called Telegraphists Cramp. Such diseases are known as Occupational Diseases. Schedule III to the Workmen's Compensation Act contains a list of occupational diseases divided into three parts, part A, Part B and Part C. Part A includes Anthrax, Compressed Air Sickness, Poisoning by lead tetra-ethyl and nitrous fumes. Part B includes poisoning by lead compounds, phosphorus, mercury etc., cancer of the skin, telegraphist's cramp etc. Part C includes Silicosis, Asbestosis etc.

Section 3(2) of the Act provides that an occupational disease "shall be deemed to be an injury by accident within the meaning of this section and. unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment."

For diseases included in Part A of Schedule III, the employer liability' to pay compensation when a workman employed by him contracts the disease. For the diseases included in Part B, the employer is liable if a workman contracts it while in his service and if the workman has been in his service for a continuous period of six months which period shall not include a period of service under any other employer in the same kind of employment. For diseases included in Part C of Schedule III, the workman is entitled to Compensation if he has been in the service of one or more employers for such continuous period as the Central Government may specify. In such cases the compensation is to be paid by all the employers in such proportions as the Commissioner of Workmen's Compensation may deem just.-Sec. 3(2A).

This list of occupational diseases and the employments producing them as contained in Schedule It may be extended (by notification) by the State Government in the case of Parts A and B and by the Central Government in the case of Part C. .

Section 3 (4) lays down that save as provided above, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of, and in the course of his employment.

### **When employer is not liable to pay compensation**

Section 3 of the Act provides that the employer is not liable to pay compensation in the following cases:

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days

(b) in respect of any injury not resulting in death, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or,

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or,

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

As regards exception clause (b) (in a workman would not lose his right to compensation only by reason of the fact that he had acted thoughtlessly or foolishly.

From Section 3 it follows that the employer is not liable to pay compensation under the Workmen's Compensation Act, in the cases also

1. When the accident did not arise out of or in the course of the employment.
2. When the workmen filed a suit for damages in the Civil Court: and
3. When disablement lasted 3 days or less(that is ,injuries were not significant)

### **EMPLOYERS LIABILITY WHEN CONTRACTOR IS ENGAGED**

Section 12 of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:

- a. The contractor is engaged to do a work which is part of the trade or business of the employer.
- b. The workmen were engaged in the course of or for the purpose of his trade or business.
- c. The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work.

This provision however does not prevent a workman from recovering compensation from the contractor instead of the employer. Here, the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

## **AMOUNT OF COMPENSATION**

The amount of compensation payable to a workman depends on

- the nature of injury caused by accident
- the monthly wages of the workman concerned and the relevant factor
- the Relevant Factor is specified in schedule IV for working out the lump sum amount of compensation

**THERE IS NO DISTINCTION BETWEEN AN ADULT AND A MINOR WORKER WITH RESPECT TO THE AMOUNT OF COMPENSATION**

The Act provides for compensation for – (1) Death (2) Permanent total disablement (3) permanent partial disablement and (4) Temporary disablement.

## **DEATH**

In case of death resulting from injury, the amount of compensation shall be equal 50% of the monthly wages of the deceased workman multiplied by the relevant factor. Or an amount of Rs 80,000/- whichever is more.

## **PERMANENT TOTAL DISABLEMENT**

In case of permanent total disablement resulting from the injury, the amount of compensation shall be 60% of the monthly wages of the injured workman multiplied by the relevant factor or Rs 90,000/- thousand whichever is more.

## **PERMANENT PARTIAL DISABLEMNET**

Where permanent partial disablement occurs, the amount of compensation payable shall be as follows:



in case of an injury specified in part II of the schedule I, the amount of compensation shall be such percentage of the compensation which would have been payable for the percentage of loss of earning capacity caused by that injury.

In case of an injury not specified in schedule I, such percentage of the compensation is payable which is proportionate to the loss of earning capacity (as assessed by a qualified medical practitioner) permanently caused by the injury.

### **TEMPORARY DISABLEMENT**

If the temporary disablement, whether total or partial results from the injury, the amount of compensation shall be a half monthly payment of the sum equivalent to 25% of the monthly wages of the workman to be paid in accordance with the provisions.

The half monthly payment shall be payable on the sixteenth day from the date of disablement. In cases where such disablement lasts for a period of 28 days or more compensation is payable from the date of disablement.

In other cases after the expiry of a waiting period of three days from the date of disablement.

### **DISTRIBUTION OF COMPENSATION**

Section 8 lays down the following rules regarding the distribution of compensation :

1. Compensation for death and lump sum payment due to a woman or to a person under a legal disability must be deposited with the Commissioner.
2. But in the case of a deceased workman, an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees. So much of such aggregate as does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.
3. Any other sum amounting to not less than Rs. 10 which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.
4. The receipt of the Commissioner shall be sufficient discharging respect of any compensation deposited with him.
5. After the deposit of the compensation, the Commissioner shall deduct therefrom the actual cost of the- workman's funeral expenses to an amount not exceeding Rs. 50 and pay the same to the person by whom the expenses were incurred.
6. The Commissioner may serve notices calling upon the dependents to appear before him for the purpose of determining the distribution of the compensation.

7. If the Commissioner is satisfied that no dependent exists, he shall repay the balance of the money to the employer.
8. The Commissioner shall on application by the employer, furnish a statement showing in detail all disbursements made.
9. The compensation money is to be distributed among the dependents in such proportions as the Commissioner thinks fit. The whole of it may be given to one person.
10. Except in the case of a woman or a person under a legal disability, the compensation money is to be paid to the person entitled thereto.
11. Money payable to a woman or a person under a legal disability may be invested or otherwise dealt with as the Commissioner thinks fit. Half-monthly payments payable to a person under a legal disability may be paid to a dependent of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.
12. The orders of the Commissioner regarding the distribution of compensation may be varied later if necessary.
13. Notice must be given to the parties affected.
14. Where under the previous para, the Commissioner varies an order on the ground that the payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid may be recovered by the procedure laid down for the recovery of arrears of land revenue.

## **PROCEDURE IN PROCEEDING BEFORE COMMISSIONER**

Section 19(1) lays down the jurisdiction of a commissioner to entertain a claim in respect of payment of compensation to workman. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workman's Compensation for such area as may be specified in the notification. The Commissioner has the following jurisdiction over following matters:

- a. Liability of any person to pay compensation.
- b. The person injured is or is not a workman.
- c. The nature and extent of disablement.
- d. The amount or duration of compensation.

According to Section 19 (2), no Civil Court, shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decide or dealt with by a Commissioner or to enforce any liability incurred under this Act. All claims shall be made subject to the provision of the Act to the Commissioner. But, such applications other than the

applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

The Commissioner shall have for the following powers—

- a. taking evidence on oath;
- b. enforcing the attendance of witness;
- c. compelling the production of documents and material objects.

According to the Section 26, all costs incidental to any proceedings before a Commissioner shall subject to rules under this Act.

*Form of application:* No application for settlement of any matter by a Commissioner shall be made, if the parties have been able to settle it by agreement.

An application to the Commissioner shall be made in the prescribed form according to the rules, and accompanied by a prescribed fee. The following particulars must be given namely-

(a) concise statement of the circumstances and the relief claimed;

(b) in case of claim for compensation against an employer, the date of service of notice of accident, with its due time of notice and the reason why notice was not given;

(c) the names and addresses of the parties; and

(d) except in case of application by dependent for compensation a concise statement of the matter on which, agreement has and of those on which agreement has not been come to. If the applicant is illiterate or for any reason is unable to furnish the required information, the application, if the applicant so desires, shall be prepared under the direction of the Commissioner. -Sec. 22.

*Appearance of parties:* Appearance may be done on behalf of applicant by a legal practitioner or an official of Insurance Company, or an authorised person of a registered Trade Union, duly authorised.-Sec. 24.

*Appeals and References:* For proceedings under the Act, the High Court of the State is the Appellate Court. The Commissioner can refer a question of law to the High Court for decision and he must decide the matter according to such decision.--Sec 27.

## **APPEAL**

An appeal lies to the High Court from the following orders of a Commissioner

- (a) An order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or an order awarding interest or penalty under section 4A;
- (b) An order refusing to allow redemption of a half-monthly payment ;

- (c) An order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of person alleging himself to be such dependent;
- (d) An order allowing or disallowing any claim for the amount of an indemnity under the provisions of section 12(2);
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions.

**Other Provisions Regarding Appeal:**

1. No appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than Rs. 300.
2. No appeal lies in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.
3. No appeal by employer lies unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against.
4. The period of limitation for an appeal under this section shall be 60 days and the provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section.

## **UNIT4- FACTORIES ACT, 1948**

The object of the Factories Act is to regulate the conditions of work in manufacturing establishments coming within the definition of the term "factory" as used in the Act.

The first Act, in India, relating to the subject was passed in 1881. This was followed by new Acts in 1891, 1911, 1922, 1934 and 1948. The Act of 1948 is more comprehensive than the previous Acts. It contains detailed provisions regarding the health, safety and welfare of workers inside factories, the hours of work, the minimum age of workers, leave with pay etc. The Act has been amended several times.

The Act is based on the provisions of the Factories Act of Great Britain passed in 1937. In 1976 the Act was amended extensively.

### **APPLICATION OF THE ACT**

The Factories Act of 1948 came into force on 1st April 1949; It applies to factories, as defined in the Act, all over India, including the State of Jammu and Kashmir.

Unless otherwise provided, the Factories Act applies to factories belonging to the Central or any State Government.--Sec. 116.

### **DEFINITION**

#### **FACTORY**

The term Factory is defined in Section 2 (m) of the Act as follows: "Factory means any premises including the precincts thereof- .

(i). whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Indian Mines Act, 1952 (Act XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.



Explanation.-For computing the number of workers for the purposes of this clause all the workers in different relays in a day shall. be taken into account. [Clause 2(m) as amended in 1976.]

Under Section 85, the State Government is empowered to declare any establishment carrying on a manufacturing process to be a factory for the purposes of the Act even though it employs less than the prescribed minimum number of workers, provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

Summary: From Sec. 2 (m) of the Act it follows that m establishment comes within the definition of a Factory if the conditions stated below are satisfied:

1. It is a place where a "manufacturing process" is carried on.
2. It employs the prescribed minimum number of "workers"

which is, ten if 'power' is used and twenty if no 'power' is used. It is sufficient if the prescribed number of workers were employed on any day of the preceding twelve months.

3. It is not a mine coming within the purview of the Indian Mines Act of 1952, a railway running shed, mobile unit belonging to the armed forces of the Union, a hotel, restaurant or eating place.

**Manufacturing Process.** This term is defined in Section 2(k) in a very wide sense. It includes :

- (i) making, altering, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar processes or book binding ; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or
- (vi) preserving or storing any article in cold storage.

For the corresponding section of the English Act, it was held that the different processes enumerated in the clauses are merely illustrative so that laundries, carpet beating, or bottle washing works come within the Act, if mechanical power is used. Patterson v. Hune

The following undertakings have been held to be manufacturing processes-bidi-making; conversion of raw-films into finished products; the preparation of eatables in the kitchen of a restaurant; use of a refrigerator for adapting any article with a view to its sale.

The scraping out of salt and grading them, even though done by, manual labour, is a manufacturing process.

**Worker** - "Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected 'with, the manufacturing process" or the subject of the manufacturing process but does not include any member of the armed forces of the Union."-Sec. 2(1), as amended in 1976.

Explanation: Worker means any person engaged in any work connected with or incidental to a manufacturing process. Thus the definition is wide. The term includes persons engaged directly and, also those who are engaged through an agency (including a contractor with or without the knowledge of the principal employer). The term includes clerical workers and persons paid by piece rates in a factory.

The term 'worker' does not include any member of the armed forces of Union. .

In case of a factory worker there must be a relationship between the employer and the employed.

Apprentices, whether remunerated or not, are workers within the meaning of the Act.

**Occupier**- "Occupier" of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent such agent shall be deemed to be the occupier of the factory.-Sec. 2(n).

In case of a ship, which is being repaired or on maintenance work is being carried out in dry dock which is available for hire, the following persons for certain section of the Act will be deemed to be occupier

- (i) the owner of the dock, and
- (ii) the owner of the ship or his agent or master or other officers-in-charge in the ship or any person who contracts with such owner, agent or master or other officers-in-charge to carry out the repair or maintenance work.-Sec. 2(n) added by The Factories (Amendment) Act, 1976.

The Act imposes several duties and responsibilities on the occupier of the factory. (See below).

An occupier of factory may be an owner, a lessee or a mere licensee but he must have the right to occupy the property. He should also control the management.

## DUTIES OF OCCUPIER

It is necessary to obtain a" licence before a factory is started. Section 6 provides that the State Government may make rules requiring, for the purposes of this Act, the submission of. plans or any class or description of factories to the Chief Inspector or the State Government, and the plans and specifications of a factory and its location.

The Amendment of 1976 provides that any replacement and addition to the factory will not be allowed if it does not reduce the I minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.

**Notice by occupier.** Section 7 provides that the occupier of a factory must, at least 15 days before he begins to occupy or use any premises as a factory; send to the Chief Inspector of Factories a written notice containing the following particulars:

- (i) the name and situation of factory ;
- (ii) the name and address of the occupier ;
- (iii) the name and address of the owner of the premises or building (including the precincts thereof) ;
- (iv) the address to which communications relating to factory may be sent ;
- (v) the nature of the manufacturing process to be carried on in the factory during the next twelve months ;
- (vi) the total rated horse power installed or to be installed in the factory, which shall not include the rated – horse power or any separate stand-by plant;
- (vii) the name of the manager of the factory for the purposes of this Act ;
- (viii) the number of workers likely to be employed in the factory ;
- (ix) such other particulars as may be prescribed.

The rules stated above are enforced because the plans and specifications of the factory must insure proper measures of health, safety and welfare of the workers.

## MEASURES TO BE TAKEN IN FACTORIES FOR HEALTH, SAFETY AND WELFARE OF WORKERS

### PROVISIONS REGARDING THE HEALTH OF WORKERS

Sections 11 to 20 of the Act contain certain provisions intended to ensure that the conditions under .which work is carried on in factories do not affect the health of the workers injuriously. The summary of the provisions are explained below:

Summary of the provisions of the Factories Act relating to the health of workers are stated below.

1. Cleanliness- Every factory shall be kept clean and free from dirt, and the outflow of drains etc. The floors must be cleaned. Drainage shall be provided. Inside walls, partitions and ceilings must be repainted at least once in five years. When washable water paint is used they

must be painted once every three years and washed at least every period of six months. - Sec. 11 as amended in 1976.

2. Disposal of wastes and effluents- The waste materials produced from the manufacturing process must be effectively disposed off-Sec. 12.

3. Ventilation and Temperature- There must be provision for adequate ventilation by the circulation of fresh air: The temperature must be kept at a comfortable level- Hot parts of machines must be separated and insulated.-Sec. 13.

4. Dust and Fume- If the manufacturing process used gives off injurious or offensive dust and fume steps must be taken so that they are not inhaled or accumulated. The exhaust fumes of internal combustion engines must be conducted outside the factory.--Sec. 14.

5. Artificial humidification- The water used for this purpose must be pure. It must be taken from some source of drinking water supply. The State Government can frame rules regarding the process of humidification etc.-Sec. 15. .

6. Over Crowding- There must be no overcrowding in a factory. In factories existing before the commencement of the Act there must be at least 350 c.ft. (~r 55 cubic metres) of space per worker. For factories built afterwards, there must be at least 500 c.ft. (or 75 cubic metres) of space. In calculating the space, an account is to be taken of space above 14 ft. (or 5 metres) from the floor.-Sec. 16.

7. Lighting. Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eyestrain.-sec. 17.

8. Drinking water. Arrangements must be made to provide a sufficient supply of wholesome drinking water. All supply' points of such water must be marked "drinking water". No such points shall be within 20 ft. (or 7.5 metres) of any latrine, washing place etc. Factories employing more than 250 workers must cool the water during the hot weather.-Sec. 18. .

9. Latrines and Urinals. Every factory must provide' sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be kept in a clean and sanitary condition. In factories. employing more than 250 workers, they shall be of prescribed sanitary types.--sec. 19.

## PROVISIONS REGARDING THE SAFETY OF WORKERS

Sections 21 to 40A, 40B and 41 of the Act lay down rules for the purpose of securing the safety of workers. Summary of the provisions of the Factories Act regarding the safety of the workers are stated below: (Sections 21 to 41) .

1. Fencing of machinery- All dangerous machinery must be securely fenced e.g., moving parts- of prime movers and flywheels connected to every prime mover. electric generators. etc.-Sec. 21.

2. Work on or near machinery in motion- Work on or near machinery in motion must be carried out only by specially trained adult male workers wearing tightly fitting clothes.-Sec. 22.
3. Employment of young persons on dangerous machines- No young person shall work at any dangerous machine unless he has been specially instructed as to the dangers and the precautions to be observed. has received sufficient training about th~ work. and is under the supervision of some person having thorough knowledge and experience of the machine.-Sec. 23.
4. Striking gear and devices for cutting off power- In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom .Sec 24.
5. Self-acting machines- Moving parts of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is not part of the machine.-Sec. 25.
6. Casing of new machinery- In all machinery installed after the commencement of the Act. certain parts must be sunk, encased or otherwise effectively guarded e.g.. set screw. bolt. toothed gearing etc. -Sec. 26.
7. Women and children near cotton Openers.-Women and children must not be allowed to work near cot/On openers, except In certain cases.-Sec. 27
8. Hoists, lifts, chains etc- Every hoist and lift must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines chains, ropes and lifting tackle .Sec. 28. 29.
9. .Revolving machinery- Where grinding is carried on the maximum safe working speed of every revolving machinery connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded.-Sec. 30.
10. Pressure plant- Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceeded-.sec. 31.
11. Floors, stairs and means of access- All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker will carry on any work.-Sec. 32.
12. Pits, sumps, openings in floors etc- Pits. sumps openings in floors etc. must be securely covered or fenced.-Sec. 33.
13. Excessive weights- No worker shall be made to carry a load so heavy as to cause him injury.-8ec. 34.



14. Protection of eyes-Effective screen or suitable goggles shall be provided to protect the eyes of the worker from fragments thrown off in course of any manufacturing process and from excessive light if any.-Sec. 35.

15. Precautions against dangerous fumes- No person shall be allowed to enter any chamber, tank etc. where dangerous fumes are likely to be present, unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter.-Secs. 36 and 36A.

16. Explosive or inflammable gas etc- where a manufacturing process produces inflammable gas, dust, fume, etc. steps must be taken to enclose the machine concerned, prevent the accumulation of substances and exclude all possible sources of ignition. Extra precautionary measures are to be taken where such substances are worked at greater than the atmospheric pressure.-Sec. 37.

17. Precaution in case of fire- Fire escapes shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked in red letters. Arrangements must be made to give warning in case of fire -sec. 38

18. Specifications of defectives etc. and safety of buildings and machinery- If any building or machine is in a defective or dangerous condition, the inspector of factories can ask for the holding of tests to determine how they can be made safe. He can also direct the adoption of the measure necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited.-Sec 39. 40.

19. Maintenance of Buildings- If the Inspector of Factories thinks that any building in a factory, or any part of it, is in such a state of disrepair that it is likely to affect the health and welfare of the workers he may serve on the occupier or manager or both in writing specifying the measures to be done before the specified date. Sec. 40A.

20. Safety Officers. The State Government may notify to the occupier to employ a number of Safety Officers in a factory (i) wherein one thousand or more workers are ordinarily employed, or (ii) wherein any manufacturing process or operation which involves the risk of bodily injury, poisoning, disease or any other hazard to health of the persons employed in the factory.-Sec. 40B.

Rules- The State Government may make rules providing for the use of such further devices for safety as may be necessary. Sec. 41.

## PROVISIONS REGARDING THE WELFARE OF WORKERS

Summary of the provisions of the Factories Act regarding the welfare of workers are stated below:

1. Washing- In every factory adequate and suitable facilities for washing shall be provided and maintained. They shall be conveniently accessible and shall be kept clean. There must be separate provisions for male and female workers.-Sec. 42.
2. Storing and drying- The State Government may make rules requiring the provision of suitable facilities for storing and drying clothing.-Sec. 43.
3. Sitting- Sitting facilities must be provided for workers who have to work in a standing position so that they may take rest when possible. When work can be done in a sitting position efficiently the Chief Inspector may direct the provision of sitting arrangements. Sec. 44.
4. First aid- Every factory must provide first aid boxes or cupboard. They must contain the prescribed materials and they must be in charge of persons trained in first aid treatment. Factories employing more than 500 persons must maintain an ambulance room containing the prescribed equipment and in charge of the prescribed medical and nursing staff.-Sec. 45.
5. Canteens- Where more than 250 workers are employed the state Government may require the opening of canteen or canteens for workers. Rules may be framed regarding the food served its management etc.-Sec. 46.
6. Shelters- In every factory where more than 150 workers are employed there must be provided adequate and suitable shelters or rest rooms and a lunch room (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition~. The standards may be fixed by the State Government. -Sec. 47,
7. Creches- In every factory where more than 30 women are employed, a room shall be provided for the use of the children (below 6 years) of such women. The room shall be adequate size well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid down by the State Government.Sec. 48.
8. Welfare officers- Welfare officers must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers. Sec. 49.
9. Rules- The State Government may make rules regarding the welfare of workers.-Sec. 50.

## **WORKING HOURS OF ADULTS**

**Weekly Hours** No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week. Sec. 51.

**Daily Hours** No adult worker shall be required or allowed to work in a factory for more than nine hours in any working day. The daily maximum may be exceeded with the previous approval of the Chief Inspector, to facilitate change of shifts.-Sec. 54.

**Intervals for Rest** The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour. The State Government or the Chief Inspector may, by order in writing, and for reasons stated therein, increase the work period to six.-Sec. 55.

**Spread over** The periods of work of an adult worker in a factory shall be arranged that inclusive of his intervals for rest under section 55, they shall not spread-over more than ten and half hours in any day. The Chief Inspector may for specified reasons increase the spreadover up to twelve hours. -Sec. 56.

## RULES REGARDING EMPLOYMENT OF ADULTS

**Night Shifts** Where a worker in a factory works on a shift which extends beyond midnight, (a) his weekly holiday and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends, and (b) the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in the previous day.-sec. 57

**Overlapping Shifts** Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government or the Chief Inspector may grant exemption from this rule.-Sec. 58.

**Double Employment** No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.-Sec. 60.

**Notice of Periods of Work** There must be displayed in every factory a notice showing periods of work of adults, classification of workers in groups according to nature of their work, shifts and relays etc. Change made in the system of work must be notified to the Inspector before change. The manager of every factory must maintain a Register of Adult Workers showing the name of each worker, the nature of his work, the group in which he is included, the relay in which he is allotted etc. The hours of work of an adult worker- must correspond with the notice referred to above and the Register- Sections 61, 62, 63.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered' in the register of adult workers.-Sec. 62 (1A) added by the Factories (Amendment) Act, 1976.

**Exemptions-** By sections 64 and 65, the State Government has been given power to exempt for limited periods certain factories from compliance with some of the provisions relating to hours of work and employment.

Such exemptions are necessary in special cases, for example in the case of workers engaged in urgent repairs or in preparatory and complementary work. In some industries work of an intermittent character and the enforcement of all the rules stated above will create hardship. The nature of the work in certain industries requires exceptional treatment, e.g., workers engaged in engine rooms and boilers or in the printing of newspapers. The State Government

may exempt persons holding positions of supervision and management or in confidential positions in a factory from the operation of the rules regarding working hours (except the rule against the employment of women at night). .

**Confidential Position.** The State Government may empower the Chief Inspector to declare a person other than any person defined by such rules, as a person holding position of supervision or management or employed in .a. confidential position in a factory, if, -the Chief Inspector is of opinion that he can be employed.

If any such person does not get more than Rs. 750 p.m. as wages he will be entitled to extra wages for overtime work.-Sec. 64(1) added by The Factories (Amendment) Act, 1976.

**Hours and Spread over** Any exemption granted under Sec. 65 (2) shall be subject to the following conditions, namely:

- (i) the total number of hours of work in any day shall not exceed twelve ;
- (ii) the spread over inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week. including overtime, shall not exceed sixty;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy five-Sec. 65(3), Factories (Amendment) Act, 1976.

**Quarter** This is a period of three consecutive months beginning on the 1st January, the 1st of April, the 1st of July or the 1st of October.-Sec. 64.

## **EMPLOYMENT OF YOUNG PERSON AND CHILDREN**

**Employment of Children** No child who has not completed his fourteenth year shall be required or allowed to work in any factory.-sec. 67.

**Certificate of Fitness and Token** A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless (a) he has been granted a certificate of fitness which is. in the custody of the manager, and (b) such child or adolescent carries a token giving a reference to such certificate-Sec. 68.

The Certificate of Fitness is a certificate granted to a child or adolescent by a Certifying Surgeon after examination: The certificate is. given to a child if the surgeon is satisfied that he has completed his fourteenth year and has attained the prescribed physical standards. The certificate is granted to an adolescent if the surgeon is satisfied that he has completed his fifteenth year and is fit for a full day's work in a factory. The certifying surgeon must have personal knowledge of the intended place of work and of the manufacturing process involved. The certificate is valid only for a period of 12 months. It may be granted subject to conditions (e.g., that of periodical re-examination).

The certificate may be renewed and, if necessary, revoked. Any fee payable for the certificate must be paid by the occupier of the factory and must not be recovered from the young person or his parents or guardian.-Sec. 69.

An adolescent who has been granted a certificate of fitness and who carries a token is deemed to be an adult for the purposes of Ch. VI and VIII of the Act. (Ch. VI deals with the hours of work of an adult and Ch. VIII deals with "annual leave"). But no adolescent who has not attained the age of seventeen years shall be employed or permitted to work in any factory during night. "Night" means a period of at least 12 consecutive hours which shall include an interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. An adolescent who has not been granted a certificate of fitness, shall be deemed to be a child for the purposes of the Act,-Sec. 70.

**Working hours for Children.** The law regarding working hours for children are stated below.-Sec. 71:

1. No child shall be employed or permitted to work in any factory-
  - (a) for more than four and a half hours in any day;
  - (b) during the night,

Explanation: For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.

2. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread-over more than five hours each, and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.
3. The provisions of section 52 shall apply also to child workers, and in respect of any child.
4. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

**Notice and Register.** A notice must be displayed showing clearly the periods of work of children.-Sec. 72.

The manager of every factory must maintain a Register of child workers showing the name of each child worker, the nature of his work the group (if any) in which he is included. the relay to which he is allotted and the number of his certificate of fitness.-Sec. 73.

No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.-Sec. 73 (IA). Factories (Amendment) Act, 1976.

The hours of work of a child must correspond with the Notice and the Register.-Sec. 74.



**Medical Examination** Where an Inspector is of opinion that a person working as an adult is a young person, or that a young person is not fit to work, he may direct the manager of the factory to have the person medically examined by a certifying surgeon.-Sec. 75.

### **Other rules regarding the employment of young persons**

No young person shall work at any dangerous machine unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and (a) has received sufficient training in work at the machine or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine. The State Government is to prescribe what machines are dangerous for the purpose of this section.-5ec. 23.

Certain restrictions on adolescents and children are stated in Sections 22(2), 27, 34 and' 87 (b).

The State Government may make rules regarding the forms of the Certificate of Fitness, the procedure relating to their issue, and the physical standards to. be attained by children and adolescents. Sec. 76.

The provisions relating to the employment of young person shall be in addition to and not in derogation of the provisions of the Children Act of 1938, 1960 and 1978.-Sec. 77.

### **CHILD-LABOUR**

Rules regarding Child-Labour are contained in the Factories Act, Mines Act etc. There are also two general Acts in the subject. The Children (Pledging of Labour) Act (Act 11 of 1933) prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged. The Children Act of 1938, 1960 and 1978 prohibit the employment of a child who has not completed his fifteenth year of age in any occupation connected with the transport of passengers, goods or mails by railway or connected with a part authority. Within the limits of any part. The Act also prohibits the employment of a child, who has not completed his fourteenth year of age, in the processes set forth in the schedule to the Act. Children between 15 and 17 can be employed subject to certain restrictions as regards their periods of rest etc.

### **ANNUAL LEAVE WITH WAGES**

The Factories Act provides for the following holidays, viz., Weekly holidays, Compensatory holidays and Annual leave with wages according to certain rules. The provisions are explained below.

**Weekly Holidays** Section 52 provides that an adult worker shall have a holiday on the first day of the week. But the manager of the factory may fix the holiday on any other day which is with three days before or after the first day of the week in case of such substitution notice must be given to the Inspector of Factories an displayed in the factory. No substitution can be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day. The State Government may make rules providing for exemption from the above section in certain cases, e.g., for urgent repairs.

The Weekly Holidays Act (Act XVIII of 1942) provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act ,can be applied to a State by notification of the State Government.

**Compensatory Holidays** Where as a result of the exemption of factory from the operation of the role regarding weekly holidays, a worker is deprived from any weekly holiday he shall be allowed within the month in which the holidays were due, or within two months immediately following that month, compensatory holidays of equal number to the holidays lost.--Sec. 53.

**Annual Leave with Wages** Sections 78 to 84 provide for the grant of a certain period of leave with wages to workmen.

Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of

- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

**Rules.** Rules regarding the Annual Leave are summarised below :

1. When counting the number of days of work performed by a worker, the following are to be included:

- (a) days of lay-off,
  - (b) maternity leave to a female worker, not exceeding twelve weeks, and
  - (c) the leave earned in the previous year. But the worker shall not earn leave for. these days.
2. The leave admissible under the aforesaid rule shall be exclusive of all holidays whether occurring during or at either end of the period of leave.
3. A worker whose service commences otherwise than on the first day of January shall be entitled to leave ,with wages at the rate laid down above if he has worked for two-thirds of the total number of days in the remainder ?f the calendar year.

4, If a worker is discharged or dismissed from service of quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled, to wages in lieu of the quantum of leave to which he was entitled Immediately before his discharge, dismissal, quitting of employment, ,superannuation or death calculated at therates specified in sub-section (1)even If he had not worked for the entire period specified In sub-section (J) or sub-section (2) making him eligible to avail of such leave. Such payment shall be made

(i) where the worker is discharged or dismissed or quits employment-before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

(ii) where the worker is superannuated or dies while in service -before the expiry of two months from the date of such superannuation or death. (Amended by the Act of 1976).

5, in calculating the leave period, fraction of leave for half a day or more shall be treated as one day and fractions of less amounts shall be omitted.

6. Leave earned, but not taken, can be carried forward to a succeeding year subject to a limit of thirty days in the case of an adult and forty days in the case of a child. But earned leave not allowed because of any scheme for leave in operation, can be carried forward without limit.

7. Application for leave must be submitted to the manager not less than 15 days before the date of commencement of leave. In the case of public utility service it must be made not less than 30 days before such date. If a worker becomes ill and wants to avail himself of the annual leave during the period of illness, he shall be granted leave even though the application is not made before the period specified above.

8. The application for leave may be for the whole of the leave due or part of it. But earned leave cannot be taken more than three times during the same year. .

9. For the purpose of ensuring the continuity of work, the occupier or manager of the factory may draw up a Scheme for regulating the grant of leave. The Scheme must be agreed to by the 'Works Committee, if any, or the representatives of workers. It must be lodged with the Chief Inspector and displayed in the factory. .

10. An application for leave submitted in proper time shall not be refused unless the refusal is in accordance with any leave scheme in operation. The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal

12. The State Government may exempt a factory from the operation of the above rules if it is satisfied that its own leave rules provide benefits (the totality - of benefits) which are not less favourable to the workers than the statutory leave rules.

13. Where by virtue of any award, agreement (including settlement) or contract of service the worker is entitled to a longer period of leave than that provided by the aforesaid rules, he will be entitled such longer leave.

14. The rules contained in these sections do not apply to railway Factory administered by the Government which are governed by leave rules approved by the Central Government.

15. If an award, agreement (including settlement) or contract of Service provides for a longer annual leave with wages than provided in this chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourably therein, the provisions of sections 79 to 82, so far , as may be, shall apply. (Added by the Amendment of 1976).t

## Wages during Leave Period

For the period of leave allowed to a worker according to rules, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he actually worked during the month immediately preceding his leave. The average rate is to be calculated, exclusive of any overtime and bonus, but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food-grains and other articles. The cash equivalent, referred to above, is to be computed according to the method used when calculating the extra wages payable -for overtime work. (See. post)-Sec. 80.

If the employment of a worker who is entitled to leave is terminated by the occupier of the factory before he has taken the entire leave to which he is entitled, he must be paid wages for the leave period not taken and such wages must be paid before the expiry of the second working day after such termination. Similarly, if the worker quits his service after having applied for and obtained leave, he must be paid wages (or the leave period and such wages must be paid on or before the next pay day. The amount of wages payable is to be calculated according to the provisions of Section 80.-Sec. 79(11).

A worker who has been allowed leave for not less than four days in the case of an adult and five days in the case of a child, shall before his leave begins, be paid the wages due for the period of leave allowed.-Sec. 81.

Wages for the leave period, if not paid by an employer, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.-Sec. 82.

## ADDITIONAL PROVISION REGULATING EMPLOYMENT OF WOMEN IN FACTORY

By section 66 the following restrictions have been imposed to women workers:

(a) **Maximum daily work is 9 hours:** No exemption from the provisions of Section 54 (which lay down that the maximum daily hours of work shall be nine hours) can be granted in respect of any women.

(b) **Prohibition of night work:** No women shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m. The State Government may by notification in the official Gazette vary the limits for any factory or group or class or description of factories. But such variation must not authorise the employment of women between the hours 10 p.m. and 5 a.m. .

(c) **Change of shift only after holiday:** There shall be no change of shifts for women except after a weekly holiday or any other holiday.

**Exception:** There is an exceptional case. The State Government may make rules providing for the exemption from the aforesaid restrictions (wholly or partially or conditionally) of women working in fish-curing or fish-canning factories. In factories mentioned above, the employment of women beyond the hours specified is necessary to prevent damage to or

deterioration in any raw material. But such rules shall remain in force for not more than three years at a time.

**Other restrictions:** There are other restrictions on the employment of women workers:

**1. Work on or near machinery in motion-** No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while the prime mover or transmission machinery is in motion or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.-Sec. 22(2).

**2. Cotton openers-** No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. If the feed-end of a cotton opener is in a room separated from the delivery-end by a partition extending to the roof or to such height as the Inspector may in a particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.-Sec. 27.

**3. Excessive weights-** The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.-Sec. 34.

**4. Creches-** In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.-Sec. 48.

**5. Dangerous operations-** The State Government is empowered to make special rules for the purpose of controlling and regulating factories which carry on operations exposing women, young persons and other workers to a serious risk of bodily injury, poisoning or disease.-Sec. 87 (b).

#### **\*REFERENCES:\***

1) Taxmann, Labour Laws, Taxmann Publication Private Limited, 2015 edn

2) S.N. Mishra, Labour Law and Industrial Law, Central Law Publication, 27th edn